No. 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET A
Appellants,

v.

S. B. STREET, ET AL., *Appellees.*

On Appeal From the Supreme Court of Georgia

REPLY TO BRIEF OF CERTAIN APPELLEES UPON REARGUMENT

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ARGUMENT

With the exception of one page, the individual Appellees' Brief Upon Reargument, all 87 pages of it, in addition to its other infirmities which we believe are apparent, assumes that it has been established that the expenditures by the appellants here under attack infringe the First Amendment rights of the individual appellees. A glance at the captions listed in the table

of contents reveals this sufficiently. T
perhaps is predicated on the remark
concocting a "composite" of distortio
of the Solicitor General's brief and dis
tions of our response to it. Point III
For example, they say it is our position
intended to authorize the expenditures h
of." P. 16. What we did say was tha
aware of them and refused to prohib
cry from a contention that Congress a
The unions need no conferral of authori
their membership, to make any expendi
wise prohibited. But even if the "c
not of distortions, it is difficult to pe
arguments of the Solicitor General
arguments made by the appellants est
principle.

As is pointed out in the brief amicus
the AFL-CIO, American labor unions h
these activities since colonial days a
had union shops or closed shops for at
and a half. Congress did not create u
bargaining, or union-security arrangem
way Labor Act did not create the rai
collective bargaining in the railroad in
shops; it simply recognized what ha
existence and imposed certain obli
parties. As this Court recognized in *Co*
Peet Co. v. *N.L.R.B.*, 338 U.S. 335, 362

> "One of the oldest techniques i
> lective bargaining is the closed sh

The sole exception to the predicati
Brief on Reargument on the assump

This assumption
rkable device of
tions of portions
listortions of por-
II, B; pp. 16, 73.
on "that Congress
es here complained
that Congress was
nibit them,—a far
s authorized them.
nority, except from
nditures not other-
"composite" were
perceive how any
al combined with
establish any legal

icus curiae filed by
ns have engaged in
s and unions have
r at least a century
e unions, collective
gements. The Rail-
railroad unions or
l industry or union
had long been in
obligations on the
Colgate-Palmolive
362:

es in the art of col-
l shop . . ."

cation of appellees'
mption that it has

been established that the expenditures h
infringe their First Amendment rights
I, F. p. 43. There they argue that i
Eleventh of the Railway Labor Act is in
prohibit illegal expenditures, then the
should be affirmed because these expendit
gal and the court below simply gave the
for its decree. There are at least two basi
this argument: (1) it has not been esta
these expenditures are illegal, and (2) i
established, the decree would be an entir
one, an injunction against the expenditure
judgment, not a decree declaring the statu
tutional and enjoining the entire operation
shop.

If it were established that these expe
late appellees' First Amendment right
agree with the Solicitor General that th
appellees have mistaken their remedy an
case, on this record, it cannot and shoul
termined what relief plaintiffs are entitl

A great variety of expenditures and
involved, as the Solicitor General says. S
not be supposed that every individual
every member of the purported class th
is opposed to every non-bargaining activ
appellant union and the organizations wit
are affiliated; surely it cannot be suppose
one of them opposes every legislative matt
by appellants and is in favor of every leg
posal opposed by any of the appellants, n
supposed that every one of the plaintif
member of the purported class they rep

posed to every candidate for office su
appellant, whether by way of direct fin
tion or a casual comment of approval b
local lodge meeting or something in b

There is nothing in the record, nor is
in fact, to indicate that any plaintiff ha
to any appellant that it disagrees wi
of any activity of any appellant, excep
ing of this law suit. The stipulation
that they in fact disagree with some of
have never apprised any appellant of
ment. As the Solicitor General suggest
before any individual could properly
particular expenditure from a fund co
him, at the least he should let the expe
he objects to such expenditure. In th
ation is that the objector simply sits
or the AFL-CIO or some other organiza
the union has some affiliation and to w
utes engages in some activity of which
and on such showing the courts of G
that the expenditure may be enjoined,
dividual appellant is relieved of some
financial requirement, but that the enf
union shop in its entirety should be e
Section 2, Eleventh is unconstitution
union engages in such activity.

This Reply would become intermi
dressed itself to each fallacy of the n
attempted to be made by the individua
believe they are fairly obvious both on
their reliance on authority. We paus
brief comments on some of them.

supported by any
financial contribu-
l by an officer at a
between.

is there anything
has ever indicated
with the objective
cept for the bring-
on (R. 176) shows
e of them, but they
of such disagree-
ests (Brief, p. 46),
erly challenge any
l contributed to by
xpender know that
this case the situ-
its back, the union
nization with which
to which it contrib-
hich he disapproves,
f Georgia hold not
ned, not that the in-
some portion of the
enforcement of the
be enjoined because
utional because the

erminable if it ad-
he numerous points
idual appellees. We
h on analysis and in
pause for but a few

Their analogy of the relief granted in *Board of Education*, 347 U.S. 483, 349 U.S explicable on any rational basis. Appelle the injunction below as though it provide kind of continuing supervision and procedu plying with a mandatory injunction. cussing this further, let us look again at proceedings "contemplated" by the trial c alleged retention of jurisdiction to consi detailed proposals for "compliance" with The "Findings, Conclusions, Order, Jud Decree" of the trial court (R. 101-7), affi Supreme Court of Georgia, totally forbad cation of the union shop agreement. The fication appears on R. 106, near the top o "provided, however, that said defendants time petition the court to dissolve said inju a showing that they no longer are engagin proper and unlawful activities described

If the decree in this case ordered th unions to terminate certain activities with a speed, or if the decree in the *Brown* case operation of public schools with a reservat school board might petition for dissolu injunction upon a showing that it no lon in unconstitutional discrimination, then relief in that case would have some bearing But neither the decree in the *Brown* case case bears any remote resemblance to the decrees posited above. Thus all the cases pellees, where further proceedings in the were prerequisite to any infringement or the conduct of any one, are utterly inappo the individual appellees say, as they do

30, 31) that the courts below declared "the basic constitutional rights" and imposed "upon the appellant unions the responsibility, in the first instance, of devising and presenting a plan of operation that will implement and protect those rights", they are indulging in pure fantasy, and are describing not the decree that was entered but provisions they wish they had included in the order they prepared and the trial court signed without change and without giving appellants a fair opportunity to express their objection. R. 227-8.

The appellees say that any of the other remedies suggested by the Solicitor General as possibly appropriate should be considered "only after the present unlawful [sic] expenditures are enjoined." Brief, p. 15. But they have not asked in any court, here or below, that such expenditures be enjoined, nor has any court enjoined them, nor indeed is there any serious contention that they are unlawful; the crux of appellees' case, at least as heretofore presented, is not that they are unlawful but that because they are made Section 2, Eleventh of the Railroad Labor Act is unconstitutional and the union shop agreements invalid.

The purported distinction between this case and the integrated bar is astonishing. Appellees say that an integrated bar is to be distinguished from a union shop because "the integrated bar is a governmental organization whereas the appellant unions are essentially private associations chosen to serve in a governmental regulatory program." It is almost incredible that any lawyer might suggest that the First Amendment is to be applied with less rigor to a "governmental organization" than to an "essentially private" organization.

As is shown in our briefs and in the brief for the United States, the decree below cannot be sustained on any theory, nor may any injunction be entered or other relief granted upon this record. As we have heretofore shown, the judgment should be reversed and the case remanded with instructions to dismiss the complaint.

Respectfully submitted,

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January 6, 1961